

OPEN MEETING ITEM

COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



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ARIZONA CORPORATION COMMISSION

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DATE: JANUARY 17, 2014

DOCKET NO.: E-02044A-12-0419

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane L. Rodda. The recommendation has been filed in the form of an Order on:

DIXIE ESCALANTE RURAL ELECTRIC ASSOCIATION, INC.
(DECLARATORY ORDER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 27, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 6, 2014 and FEBRUARY 7, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JAN 17 2014

DOCKETED BY

Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP – Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 DIXIE ESCALANTE RURAL ELECTRIC
10 ASSOCIATION, INC. DBA DIXIE POWER, FOR
11 A DETERMINATION OF THE FAIR VALUE OF
12 ITS PROPERTY AND FOR AN ORDER SETTING
13 JUST AND REASONABLE RATES.

DOCKET NO. E-02044A-12-0419

DECISION NO. _____

ORDER

14 Open Meeting
15 February 6 and 7, 2014
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 **Procedural History**

23 1. On September 25, 2012, Dixie Escalante Rural Electric Association, Inc., dba Dixie
24 Power (“Dixie” or “Cooperative”) filed an application with the Commission for a determination of
25 the fair value of its property and for an order setting just and reasonable rates. A hearing was held on
26 the rate case application on June 17, 2013.

27 2. In its rate case testimony, Staff noted that Dixie had not sought approval for all of its
28 existing debts and loans.¹ Staff recommended that Dixie either file an application seeking
authorization for its long-term debt or file a request for a declaratory order that Commission
authorization is not required. At the rate case hearing, Dixie stated that it would file, by July 26,

¹ See Direct Testimony of Mary J. Rimback at 10. The last Commission Decision relating to a financing request from Dixie is Decision No. 59727 (June 26, 1996).

1 2013, a request for a declaratory order that certain Arizona statutes regarding Commission approval
2 of financing encumbrances are not applicable to Dixie.

3 3. On July 15, 2013, the Cooperative filed a Petition for Declaratory Order in this docket,
4 by which it requests confirmation that A.R.S. §§40-301 through 40-303 and 40-285 do not apply to
5 Dixie in relation to past or future secured loan transactions ("Petition").

6 4. By Procedural Order dated August 15, 2013, a procedural conference was scheduled
7 to discuss an appropriate means for processing the Petition. The procedural conference convened as
8 scheduled on August 23, 2013. Staff and the Cooperative appeared through counsel, and agreed that
9 Staff would file a response to the Petition by September 6, 2013, and Dixie would file its reply
10 thereto, if any, by September 13, 2013, whereupon the issues raised in the Petition would be taken
11 under advisement, or if necessary, an additional procedural conference would be scheduled.

12 5. On September 6, 2013, Staff filed its Responsive Brief.

13 6. On September 12, 2013, Dixie filed its Reply in Support of Petition for Declaratory
14 Order.

15 7. On September 23, 2013, the Commission issued Decision No. 74082, which set new
16 rates for Dixie, and *inter alia*, determined that that the Commission would consider the long-term
17 debt approval issues raised in the Petition in a subsequent Decision issued in this docket.

18 **Dixie Background**

19 8. Dixie is a Utah non-profit member-owned electric distribution utility providing utility
20 service to the public both in Utah and in Mohave County, Arizona. Dixie provides service in Arizona
21 pursuant to authority granted in Decision Nos. 46063 (May 12, 1975) and 49208 (July 28, 1978).
22 Dixie's main business offices are located in Beryl, Utah. Dixie is managed by a Board of Directors
23 which is elected by its member-owners.

24 9. Dixie has no generating capacity of its own, and is a member of Deseret Generation
25 Cooperative, Inc. ("Deseret"), a generation and transmission cooperative located in Utah. Dixie
26 operates transmission and distribution facilities in Utah and Arizona to provide electric utility
27 distribution service to approximately 13,500 customers in Utah, and to approximately 2,221 metered
28

1 customers (1,980 residential) in the northwest corner of Arizona in the Arizona Strip, in and around
2 the community of Littlefield, Mohave County, Arizona.

3 10. As a nonprofit cooperative, Dixie's need for debt financing to carry on the business of
4 providing services in Utah and Arizona is an essential part of its operations.²

5 11. Dixie's existing debt is provided by the National Rural Utilities Cooperative Finance
6 Corporation ("CFC"). The CFC loan agreements contain covenants regarding Dixie's operations,
7 including restrictions on the Cooperative's ability to sell, lease, or transfer its capital assets.

8 12. Dixie has a history of compliance with Commission requirements.

9 **Petition**

10 13. By its Petition, Dixie requests that the Commission enter an Order confirming that
11 A.R.S. § 40-301 *et seq.* and A.R.S. § 40-285 are not applicable to Dixie's secured loan transactions.
12 Dixie also requests that the Commission find it reasonable and appropriate to take no action in regard
13 to Dixie's existing loans and to confirm that the Commission's inaction with regard to existing loans
14 does not deem them void under Arizona statutory law. Dixie contends that similarities between Dixie
15 and Garkane Energy Cooperative, Inc. ("Garkane") support a similar conclusion for Dixie as the
16 Commission reached in Decision No. 72175 (February 11, 2011)("Garkane Decision").

17 14. Dixie states that in Decision No. 72175 the Commission found that Garkane, which is
18 domiciled in Utah and applies to the Utah Public Service Commission ("Utah PSC") for approval of
19 its financing transactions, "is not required to apply to the Commission for approval of each future
20 transaction for which approval would be required under A.R.S. §§ 40-301 through 40-303, and
21 A.R.S. § 40-285 with respect to Garkane's debt-related encumbrances."³ According to Dixie,
22 Decision No. 72175 was based on the Commission's legal conclusion that under the existing facts of
23 that case, it would be an impermissible burden on interstate commerce, under U.S. Const. Art. I, § 8,
24 Cl. 3, for the Commission to exercise its jurisdiction under A.R.S. §§ 40-301 through 40-303 or
25 under A.R.S. § 40-285 with respect to Garkane's future financing transactions for which Commission
26

27 ² See Ex A to Petition, Affidavit of LaDel Laub, President and CEO of Dixie.

28 ³ Decision No. 72175 further ordered Garkane to file, for informational purposes, any application for approval of financing filed with the Utah PSC within 10 days of its filing, and to file a copy of any subsequent Order issued by the Utah PSC regarding such application within 10 days of its issuance.

1 approval would otherwise be required under those statutes. Dixie also asserts that the Commission
2 made a legal conclusion that it was reasonable and appropriate and in the public interest for the
3 Commission to take no action as to the prior debt transactions (which had not received prior
4 Commission approval), and that the Commission inaction was not intended, and should not be
5 construed, as a finding that the transactions are void under A.R.S. § 40-303(A) or A.R.S. § 40-
6 285(A).

7 15. Dixie argues that the Garkane Decision was based on facts similar to those presented
8 in Dixie's Petition. Specifically, the Cooperative notes the following facts which it believes the
9 Commission found relevant to its decision: Garkane is a nonprofit rural electric cooperative with
10 customers in both Utah and Arizona; Garkane has been serving Arizona customers since 1966; at the
11 time of the Garkane Decision, Garkane had a customer mix of 89 percent of its customers in Utah and
12 11 percent in Arizona; Garkane was found to be financially sound with a history of compliance with
13 Commission requirements; and finally, Garkane is domiciled in Utah and its financial transactions are
14 subject to the jurisdiction and approval of the Utah PSC.⁴

15 16. Dixie asserts that in light of the Utah PSC's jurisdiction, the Commission concluded
16 in the Garkane Decision that requiring Arizona approval of Garkane's transactions would pose a
17 significant potential burden of inconsistent regulation between the two state entities, and that the
18 Commission's interest in exercising its jurisdiction under Arizona's statutes was clearly outweighed
19 by the onerous impact on interstate commerce.⁵

20 17. Dixie argues that its factual situation is similar to Garkane's, pointing to the following:

- 21 a. Dixie is a nonprofit rural electric cooperative with customers in both Utah and
22 Arizona;
- 23 b. Dixie has been serving customers in Arizona since 1978;
- 24 c. In 2012 Dixie had a customer mix of 86 percent in Utah and 14 percent in Arizona and
25 less than 10 percent of its electric revenues were derived from operations in Arizona;

26
27
28 ⁴ See Decision No. 72175 at 19.

⁵ Petition at 3-4.

1 d. Dixie is financially sound with a history of compliance with Commission
2 requirements; and

3 e. Dixie is domiciled in Utah and its financial transactions are subject to the jurisdiction
4 and approval of the Utah PSC.⁶

5 18. In addition, Dixie states that as was the case for Garkane, Dixie stopped seeking
6 Commission approval for its debt financing in reliance on a series of decisions in which the
7 Commission declined jurisdiction over foreign public service corporations engaged in interstate
8 commerce. Thus, the Cooperative argues that the Commission should find that it was reasonable for
9 Dixie to rely on the Commission's prior decisions as well as its communications with the
10 Commission's Legal Division in which it confirmed its belief that Arizona would not exercise
11 jurisdiction to approve financing transactions, to conclude that the Cooperative did not need to obtain
12 Commission approval of its past debt financings.⁷

13 19. Dixie argues that the similarities in factual circumstances between it and Garkane
14 support the same conclusion reached in the Garkane Decision, namely that the Commission's interest
15 in exercising its regulatory jurisdiction over Dixie's secured loan transactions pursuant to A.R.S.
16 §§40-301, 40-302, and 40-303 and 40-285 is substantially outweighed by the significant risk of
17 inconsistent regulation and the onerous impact on interstate commerce. In addition, Dixie argues that
18 the Garkane Decision supports a finding that application of the Arizona statutes to Dixie's past and
19 future secured loan transaction would be constitutionally impermissible.

20 20. In its Petition, Dixie stated that it is willing to provide Commission Staff with a
21 courtesy copy of all future financing applications along with an affidavit certifying the then-existing
22 percentage split of its customers in Utah and Arizona.⁸

23 **Staff Recommendations**

24 21. Staff asserts that in the Garkane Decision the Commission prescribes the criteria for
25 utilities such as Dixie to meet in order for A.R.S. §§ 40-301 through 40-303 and §40-285 not to apply
26

27 ⁶ Petition at 4.

28 ⁷ Dixie states that it confirmed its understanding in 2000 in a letter sent to the Commission's the Legal Division. Attached as Ex B to Dixie's Petition.

⁸ Petition at 5.

1 to financing and encumbrance transactions. Staff concludes that given the legal analysis and facts set
 2 forth in the Garkane Decision, together with the factual background established by Dixie, that Dixie
 3 has adequately provided sufficient support to warrant a finding commensurate with the conclusions in
 4 the Garkane Decision.⁹ Staff emphasized, however, the need to require Dixie to file courtesy copies
 5 with the Commission and Staff of all future financing applications, affidavits certifying its then-
 6 existing percentages of Utah and Arizona customers, and any orders issued relative thereto by the
 7 Utah PSC.

8 22. In its Reply to Staff's Brief, Dixie indicated that it agreed with Staff's
 9 recommendations concerning filing courtesy copies of future financing applications, affidavits and
 10 any orders issued relative thereto by the Utah PSC.¹⁰

Analysis and Conclusions

23. The Arizona Statutes at Issue

1. A.R.S. § 40-285 provides, in pertinent part:

A. A public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant, or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor shall such corporation merge such system or any part thereof with any other public service corporation without first having secured from the commission an order authorizing it to do so. Every such disposition, encumbrance or merger made other than in accordance with the order of the commission authorizing it is void.

....

C. Nothing in this section shall prevent the sale, lease or other disposition by any such corporation of property, which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation shall be

⁹ The facts that Staff cites include: 1) that Dixie is a nonprofit rural electric cooperative based in Utah which has served Arizona customers for a significant period; 2) Dixie served a total of 15,700 customers, about 13,500 (86 percent) of which are located in Utah and 2,200 (14 percent of which are located in Mohave County, Arizona; 3) in 2012, 92.3 percent (362,380,496 kWh) of its 392,573,880 kWh sold were to Utah customers and 7.7 percent (30,193,384 kWh) to Arizona customers; 4) 91.7 percent (\$20,869,474) of its \$22,746,854 total 2012 electric revenue was derived from Utah customers compared to 8.3 percent (\$1,877,380) from Arizona customers; 5) Dixie is financially sound; 6) Dixie's financial transactions are reviewed by the Utah PSC and governed by Utah statutes; and 7) as a borrower of the federal government, Dixie's financial transactions are subject to significant oversight under the U.S. Code and Code of Federal Regulations.

¹⁰ Dixie also clarified that it is a borrower of the CFC and not the Rural Utilities Service ("RUS") as indicated in Staff's Brief. The Cooperative states that it confirmed with Staff that the covenants contained in the CFC loan agreements provide sufficient additional oversight and that the clarification regarding lenders does not alter Staff's conclusions or recommendations.

conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public as to any purchaser of the property in good faith for value.

....

2. A.R.S. § 40-301 reads as follows:

A. The power of public service corporations to issue stocks and stock certificates, bonds, notes and other evidences of indebtedness, and to create liens on their property located within this state is a special privilege, the right of supervision, restriction and control of which is vested in the state, and such power shall be exercised as provided by law and under rules, regulations and orders of the commission.

B. A public service corporation may issue stocks and stock certificates, bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, only when authorized by an order of the commission.

C. The commission shall not make any order or supplemental order granting any application as provided by this article unless it finds that such issue is for lawful purposes which are within the corporate powers of the applicant, are compatible with the public interest, with sound financial practices, and with the proper performance by the applicant of service as a public service corporation and will not impair its ability to perform that service.

D. The provisions of this article shall not apply to foreign public service corporations providing communications service within this state whose physical facilities are also used in providing communications service in interstate commerce.

3. A.R.S. § 40-302 provides, in pertinent part:

A. Before a public service corporation issues stocks and stock certificates, bonds, notes and other evidences of indebtedness, it shall first secure from the commission an order authorizing such issue and stating the amount thereof, the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the issue is reasonably necessary or appropriate for the purposes specified in the order, pursuant to § 40-301, and that, except as otherwise permitted in the order, such purposes are not, wholly or in part, reasonably chargeable to operative expenses or to income. Before an order is issued under this section, notice of the filing of the application for such order shall be given by the commission or the applicant in such form and manner as the commission deems appropriate. The commission may hold a hearing, and make inquiry or investigation, and examine witnesses, books, papers, and documents, and require filing data it deems of assistance.

B. The commission may grant or refuse permission for the issue of evidences of indebtedness or grant the permission to issue them in a lesser amount, and may attach to its permission conditions it deems reasonable and necessary. The commission may authorize issues less than, equivalent to or greater than the authorized or subscribed capital stock of the corporation, and the provisions of the general laws of the state with reference thereto

have no application to public service corporations.

C. A public service corporation shall not, without consent of the commission, apply the issue of any stock or stock certificate, bond, note or other evidence of indebtedness, or any part thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for the purpose, or issue or dispose of the proceeds of such issuance on any terms less favorable than those specified in the order.

D. A public service corporation may issue notes, not exceeding seven per cent of total capitalization if operating revenues exceed two hundred fifty thousand dollars, for proper purposes and not in violation of law payable at periods of not more than twelve months after date of issuance, without consent of the commission, but no such note shall, wholly or in part, be refunded by any issue of stocks or stock certificates, bonds, notes or any other evidence of indebtedness without consent of the commission.

....

4. A.R.S. § 40-303 provides, in pertinent part:

A. All stock and every stock certificate, and every bond, note or other evidence of indebtedness of a public service corporation, issued without a valid order of the commission authorizing the issue, or if issued with the authorization of the commission but not conforming to the order of authorization of the commission, is void, but no failure in any other respect to comply with the terms or conditions of the order of authorization of the commission shall make the issue void, except as to a person taking the issue other than in good faith and for value and without actual notice.

B. Every public service corporation which, directly or indirectly, issues or causes to be issued any stock or stock certificate, bond, note or other evidence of indebtedness not in conformity with the order of the commission authorizing the issue, or contrary to law, or which applies proceeds from the sale thereof or any part thereof, to any purpose other than the purpose specified in the commission order, or to any purpose specified in this order in excess of the amount in the order authorized for such purpose, is subject to a penalty of not less than five hundred or more than twenty thousand dollars for each offense.

C. A person is guilty of a class 4 felony who:

1. Knowingly authorizes, directs, aids in, issues or executes any stock or stock certificate, bond, note or other evidence of indebtedness not in conformity with the order of the commission authorizing such, or contrary to law.

....

24. **The Commerce Clause.** The Commerce Clause of the United States Constitution states: "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]" (U.S. Const. Art. I, § 8, Cl. 3.) Under a concept

referred to as the “dormant Commerce Clause,” the Commerce Clause has been interpreted to prevent state regulation that discriminates against or overly burdens interstate commerce.¹¹

25. To determine whether a state law violates the dormant Commerce Clause, one first must determine whether the law discriminates on its face against interstate commerce, by treating in-state and out-of-state economic interests differently to benefit the former and burden the latter.¹² If a discriminatory state law is motivated by economic protectionism, it is virtually per se invalid and can only be redeemed by a showing that the state has no other means to advance a legitimate local purpose. If no facial discrimination is found because in-state business interests are treated the same as out-of-state business interests, the next test is that set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), which balances local concerns and the law’s incidental effects upon interstate commerce.¹³ Under *Pike*, a law is upheld unless the burden on interstate commerce is clearly excessive in relation to the putative local benefits.

26. **The Garkane Decision.** In the Garkane Decision, the Commission determined that the Arizona statutes in question are facially neutral in that they apply the same standards to all public service corporations, regardless of domicile. Thus, the Commission held that it is appropriate to apply the *Pike* test to determine the statutes’ constitutionality as applied to a foreign-domiciled public service corporation, by balancing the local interests served against any burden on interstate commerce.¹⁴ The Commission’s analyzed the benefits and burdens as follows:

The local interests served by A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285 are great. The United States Supreme Court has recognized that “the regulation of utilities is one of the most important of the functions traditionally associated with the police powers of the states.” (Arkansas Elec. Coop. v. Arkansas Pub. Serv. Comm’n, 461 U.S. 375, 377 (1983).) A.R.S. §§ 40-301 through 40-303 are designed to ensure that public service corporations do not issue stock, stock certificates, bonds, notes, or other evidence of long-term indebtedness or create liens on their Arizona property unless doing so is consistent with the public interest, sound financial practices, and a public service corporation’s maintaining its ability to provide an appropriate level of service as a utility. A.R.S. § 40-285 is designed, in pertinent part, to ensure that a public service corporation does not divest itself of or encumber any portion of its plant or

¹¹ See, e.g., *United Haulers Assoc., Inc. v. Oneida-Herkimer Solid Waste Management Auth.*, 550 U.S. 330, 338, 346 (2007).

¹² *United Haulers*, 550 U.S. at 338.

¹³ *United Haulers*, 550 U.S. at 346.

¹⁴ Decision No. 72175 at 17.

1 system that is necessary or useful in performing its duties as a utility, so as
 2 to prevent it from impairing its service. At their most basic levels, A.R.S.
 3 §§ 40-301 through 40-303 and A.R.S. § 40-285 are designed to ensure that
 4 public service corporations are not able to engage in inadvisable financial
 5 dealings that will jeopardize their ability to provide an appropriate level of
 6 service to their customers at just and reasonable rates. They are designed
 7 to protect utility customers from being placed in jeopardy of receiving
 8 substandard service or no service or of paying unjust rates and charges to
 9 receive service, where the jeopardy is caused by inadvisable or unjust
 10 financial decisions of the public service corporation. It is incontrovertible
 11 that the local interests served by the statutes are legitimate and of great
 12 importance.

13 The obvious potential burden to Garkane, and on interstate commerce, is
 14 the prospect of inconsistent regulation; this Commission may say no to a
 15 transaction, even if the Utah PSC may have said yes, or may impose with
 16 its approval conditions that are not required by the Utah PSC. This
 17 potential burden is significant. Several state supreme courts have
 18 concluded that this burden is sufficient to overcome a public service
 19 commission's strong local interests in regulating a foreign public service
 20 corporation's issuance of securities. (Panhandle E. Pipe Line Co. v.
 21 Public Util. Comm'n, 383 N.E.2d 1163 (Ohio 1978); Utilities Comm'n v.
 22 Southern Bell Tel. & Tel. Co., 217 S.E.2d 543 (N.C. 1975); United Air
 23 Lines, Inc. v. Illinois Commerce Comm'n, 207 N.E.2d 433 (Ill. 1965);
 24 United Air Lines, Inc. v. Nebraska State Ry. Comm'n, 112 N.W.2d 414
 25 (Neb. 1961).)

26 The Commission concluded that at the time of its Decision, "based on the currently existing facts, it
 27 would be an impermissible burden on interstate commerce for the Commission to exercise
 28 jurisdiction over Garkane pursuant to A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285."¹⁵

29 **27. Prior Commission Decisions.** On four occasions prior to 2000, the Commission
 30 found that exercising A.R.S. §§ 40-301 through 40-303 jurisdiction over foreign corporations who
 31 are engaged in interstate commerce "would create an impermissible burden on interstate commerce in
 32 violation of the United States Constitution." (See Decision No. 51727 (January 16, 1981); Decision
 33 No. 52244 (June 18, 1981); Decision No. 53560 (May 18, 1983); and Decision No. 61895 (August
 34 27, 1999).) These appear to be the decisions on which Dixie states that it relied when it stopped
 35 submitting financing requests for Commission approval.¹⁶

36 **28. Conclusion.** We reconfirm our analysis in the Garkane Decision. The background
 37 facts relating to Dixie and Garkane are substantially similar. Thus, we find that based on existing
 38 facts, Dixie has demonstrated that until further Order, it need not apply to the Commission for

¹⁵ Decision No. 72175 at 17-18.

¹⁶ These Decisions, however, do not set out any dormant Commerce Clause analysis, which the Commission determined in the Garkane Decision to be the appropriate analysis.

1 approval of each future transaction for which approval would otherwise be required under A.R.S.
2 §§40-301 through 40-303, and A.R.S. §40-285 with respect to Dixie's debt or encumbrances.¹⁷ As
3 was the case in the Garkane Decision, in reaching this conclusion, we rely on the existing facts,
4 including: 1) Dixie is a nonprofit rural electric cooperative based in Utah which has served Arizona
5 customers for a significant period; 2) Dixie serves a total of 15,700 customers, with approximately 86
6 percent located in Utah and 14 percent located in Arizona; 3) approximately 92.3 percent of Dixie's
7 total kWh sold were to Utah customers and 7.7 percent to Arizona customers; 4) 91.7 percent of
8 Dixie's total 2012 electric revenue was derived from Utah customers compared to 8.3 percent from
9 Arizona customers; 5) Dixie is financially sound; 6) Dixie's financial transactions are reviewed by
10 the Utah PSC and governed by Utah statutes; and 7) as a borrower of the CFC, Dixie's financial
11 transactions are subject to significant oversight under the U.S. Code and Code of Federal
12 Regulations; and because the Commission has authority to disallow imprudent debt service costs.

13 29. Furthermore, we find that Dixie's reliance on prior Commission decisions in deciding
14 that it was not required to obtain Commission approval of its prior financing transactions was not
15 unreasonable. Based on our finding that exercising jurisdiction over Dixie's financial transactions
16 under A.R.S. §§ 40-301 through 40-303 or under A.R.S. § 40-285 would be an impermissible burden
17 on interstate commerce, we find that it is unnecessary for the Commission to take any action
18 regarding these transactions. Nothing herein should be construed as a finding that the transactions
19 are void under A.R.S. §§ 40-303(A) or 40-285(A).

20 30. Finally, we concur with Staff that requests such as these require a case-by-case
21 analysis based on current facts. Circumstances change over time which can affect the balancing test
22 analysis. Given this potential for change, it is reasonable to require Dixie to keep the Commission
23 informed of its financing activities and the balance of customers between Utah and Arizona; thus, we
24 adopt Staff's recommendation that Dixie file with the Commission courtesy copies of any future
25 financing applications, affidavits certifying its then-existing percentages of Utah and Arizona
26 customers, and any Utah PSC orders relative to these requests.

27
28 ¹⁷ This conclusion is consistent with our Decision in Docket No. E-01851A-11-0415 relative to a request for declaratory order by Columbus Electric Cooperative, Inc. based on the same statutes.

CONCLUSIONS OF LAW

1
2 1. Dixie is a public service corporation within the meaning of Article XV of the Arizona
3 Constitution and A.R.S. Title 40, Chapter 2.

4 2. The Commission has jurisdiction over Dixie and the subject matter of its Petition for a
5 Declaratory Order.

6 3. Dixie is a foreign public service corporation doing business in the State of Arizona
7 and is engaged in interstate commerce.

8 4. Under the currently existing facts, it would be an impermissible burden on interstate
9 commerce, under U.S. Const. Art. I, § 8, Cl. 3, for the Commission to exercise its jurisdiction under
10 A.R.S. §§ 40-301 through 40-303 or under A.R.S. § 40-285 as against Dixie, in relation to Dixie's
11 future transactions for which approval would otherwise be required under those statutes.

12 5. It is reasonable and appropriate and in the public interest for the Commission not to
13 take any action as to Dixie's prior financing transactions. This inaction is not intended and should
14 not be construed as a finding that the transactions are void under A.R.S. § 40-303(A) or A.R.S. § 40-
15 285(A).

ORDER

16
17 IT IS THEREFORE ORDERED that, based on the currently existing facts, Dixie Escalante
18 Rural Electric Association, Inc., dba Dixie Power is not required to apply to the Commission for
19 approval of each future transaction for which approval would be required under A.R.S. §§ 40-301
20 through 40-303, and A.R.S. § 40-285 with respect to Dixie Escalante Rural Electric Association, Inc.,
21 dba Dixie Power's debt or encumbrances.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that Dixie Escalante Rural Electric Association, Inc., dba Dixie Power shall file for informational purposes, with Docket Control, in this docket, any application for approval of financing filed with the Utah Public Service Commission, and an affidavit certifying its then-existing percentages of Utah and Arizona customers, within 10 days of its filing; and a copy of any subsequent Order issued by the Utah Public Service Commission regarding such application, within 10 days of its issuance.

IT IS FURTHER ORDERED that this Decision is effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
JR:tv

1 SERVICE LIST FOR:

DIXIE ESCALANTE RURAL ELECTRIC
ASSOCIATION, INC.

2

3 DOCKET NO.:

E-02044A-12-0419

4

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